

Honorable Marc Barreca
Hearing date: January 7, 2015; 1:30 p.m.
Hearing Place: Room 7106, 700 Stewart Street, Seattle, WA 98101
Responses due by: December 31, 2014; by 4:30 p.m.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:)	Chapter 7
)	Bankruptcy No. 14-13193
TREND SOUND PROMOTER AMG CORP.,)	
)	
Debtor(s).)	
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BANKRUPTCY ESTATE OF TREND)	Adversary No. 14-01248
SOUND PROMOTER AMG CORP.,)	
by and through Nancy James, Bankruptcy)	
Trustee,)	
)	
Plaintiff,)	
)	
v.)	MOTION FOR AN ORDER
)	AUTHORIZING TRUSTEE TO
VOLODIMYR PIGIDA and JANE DOE)	AMEND COMPLAINT
PIGIDA, husband and wife, and the marital)	AND TO ADD PARTY
community comprised thereof, individually)	
and as trustee of the Lakeshore Enterprises)	
Trust; and MARINA BONDARENKO and)	
JOHN DOE BONDARENKO, wife and)	
husband, and the marital community)	
comprised thereof, individually and as trustee)	
of the Lakeshore Enterprises Trust,)	
)	
Defendants.)	
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COMES NOW the plaintiff, the Bankruptcy Estate of Trend Sound Promoter AMG Corp.,
by and through the duly appointed trustee, Nancy James, through counsel, The Rigby Law Firm, and
James Rigby, and moves this court for an order authorizing the trustee to amend the Complaint to
Recover Fraudulent Conveyance in the form of the Amended Complaint to Recover Fraudulent

**MOTION FOR AN ORDER AUTHORIZING
TRUSTEE TO AMEND COMPLAINT AND TO
ADD PARTY - 141217iMot Page 1**

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Seattle, WA 98101
(206) 441-0826

1 Conveyance, or in the Alternative to Recover a Preference, and to Add Party, a copy of which is
2 attached hereto, and to add SoundT Studios LLC (“SoundT”) as a defendant in this action.

3 The Complaint to Recover Fraudulent Conveyance in the instance adversary proceeding was
4 filed on June 9, 2014, barely one month after the date the bankruptcy petition was filed. The
5 complaint in this matter was filed on an expedited basis based upon the U.S. Trustee’s motion to
6 convert the matter to a Chapter 7 proceeding and its supporting documents. It appeared from those
7 documents that the defendants may be in the process of transferring property of the estate beyond
8 the reach of the bankruptcy trustee and perhaps even this court’s jurisdiction. The complaint was
9 filed before the typical pre-filing investigation could have been done utilizing Bankruptcy Rule
10 2004. Consequently, the complaint was drafted in a narrow manner to best match the facts that were
11 known to the trustee at that point in time. The complaint was styled as a fraudulent conveyance.

12 Since the filing of the complaint, new information in the answer to the complaint and two
13 rounds of discovery indicate that the transfer is better characterized as a preference rather than a
14 fraudulent conveyance. While the answers to the complaint were general denials, the transaction
15 was more particularly described in the defendants’ answers to Interrogatory No. 8:

16 “On or about January 20, 2014, SoundTrack Studio, LLC [sic]
17 assigned \$1,454,448.11 of licensing fees owed to Ticor Title. The
18 purpose of the assignment was to purchase the subject property. The
19 subject property is used as a studio, office and residence. Soundtrack
20 Studio, LLC [sic] uses the lower half of the property as an
21 office/recording studio. The upper portion is used as a personal
residence by Volodymyr Pigida. The arrangement was agreed to by
Pigida and Soundtrack Studio, LLC [sic]. Because Soundtrack
Studio [sic] had delayed payment of some of its licensing fees that
accrued in 2013, the amount assigned to Ticor Title was due and
owing at the time of the assignment.”

22 More background of the transfer is provided by the defendants’ answer to Interrogatory No.
23 5:

24 “Trend Sound Promoter AMG, Corp. entered into a distribution
25 agreement with Soundtrack Studio [sic] in 2012. The distribution
agreement granted TSP the right to license music owned by
Soundtrack Studio, LLC [sic] for resale. As part of that distribution
agreement, TSP was to pay Soundtrack [sic] a quarterly licensing fee.
The fee was calculated quarterly based upon a certain percentage of

1 revenue TSP generated from the sale of licensing agreements.
2 Additionally, the distribution agreement authorized SoundTrack
3 Studio [sic] both to assign the licensing fee to whomever it chose and
4 to delay payment of the quarterly fee if it chose to. The funds that
5 were transferred were licensing fees owed to Soundtrack Studio, LLC
6 [sic] from quarterly licensing fees that had accrued during 2013.”

7 Pigida’s answers to interrogatories further explain why the subject property was titled in the
8 name of Lakeshore Enterprises Trust. The answer to Interrogatory No. 7 reads:

9 “I served as co-trustee in the purchase of the subject property by
10 Lakeshore Enterprises Trust. I also selected the property because it
11 could serve as a recording studio and a residence. Furthermore, I had
12 the funds transferred to Lakeshore as the assignee from Soundtrack
13 Studio, LLC [sic].”

14 The complaint is pled both for actual fraud and for constructive fraud. To the extent that the
15 complaint speaks to constructive fraud, the defendants may have a defense to the less than
16 reasonably equivalent value element. The transaction as portrayed by the defendants appears to be
17 a preference and the trustee should be allowed to amend the complaint to add a claim for a
18 preference.

19 Federal Rules of Civil Procedure 15(a) provides:

20 “Amendments Before Trial.

21 . . .
22 (2) *Other Amendments.* In all other cases, a party
23 may amend its pleadings only with the
24 opposing party’s written consent or the court’s
25 leave. The court should freely give leave
when justice so requires.”

The test for allowing an amendment to a complaint is “when justice so requires.” Courts
have been very liberal in allowing amendments to pleadings, absent undue prejudice to the adverse
party, undue delay, lack of good faith or where the amendment would be subject to a motion to
dismiss or strike. *Colliers on Bankruptcy*, P. 7015.04.

There will be no undue prejudice to the adverse party in this case. While interrogatories
have been promulgated and answered, no depositions have been taken. No discovery regarding the
content of expert witness reports has been conducted. There is no undue delay. The trial is still
more than six months off. There is no lack of good faith on the part of the trustee, inasmuch as at

1 the point when the initial discovery set forth the true substance of the transfer this motion to amend
2 was made. Likewise, the amended complaint will not be subject to a 12(b)(6) motion. Whether or
3 not it will withstand a motion for summary judgment will be determined in the future and is not the
4 test at this point.

5 The nature of the transfer has been clarified by discovery, the transfer appears to be more
6 in the nature of a preference than a fraudulent conveyance and the trustee should be allowed to
7 amend the complaint.

8 Federal Rules of Civil Procedure 21 provides:

9 “ . . . the court may at any time, on just terms, add or drop a party.”

10 Since the defendants take the position that SoundT is the party for whose benefit the transfer
11 was made, SoundT should be added as a defendant.

12 WHEREFORE, the trustee prays for an order accordingly.

13 DATED this 17th day of December, 2014.

14 THE RIGBY LAW FIRM

15 /s/ *James Rigby*

16 _____
17 James Rigby, WSBA #9658
18 Of Attorneys for Plaintiff/Trustee
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SOUND PROMOTER AMG CORP.,)	
by and through Nancy James, Bankruptcy)	
Trustee,)	
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Plaintiff,)	
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v.)	AMENDED COMPLAINT TO RECOVER
)	FRAUDULENT CONVEYANCE, OR IN
)	THE ALTERNATIVE TO RECOVER
VOLODIMYR PIGIDA and JANE DOE)	A PREFERENCE, AND TO ADD
PIGIDA, husband and wife, and the marital)	PARTY
community comprised thereof, individually)	
and as trustee of the Lakeshore Enterprises)	
Trust; MARINA BONDARENKO and)	
JOHN DOE BONDARENKO, wife and)	
husband, and the marital community)	
comprised thereof, individually and as trustee)	
of the Lakeshore Enterprises Trust; and)	
SOUNDT STUDIOS LLC, a Washington)	
limited liability company,)	
)	
Defendants.)	
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COMES NOW the trustee herein, Nancy James, through counsel, The Rigby Law Firm, and James Rigby, and states and alleges as follows:

1 I. PARTIES AND JURISDICTION

2 1. The plaintiff is the duly qualified and acting trustee of the estate of the above-named
3 debtor.

4 2. Defendant Volodimir Pigida (“Pigida”) is an individual believed to reside in King
5 County, Washington.

6 3. Defendants Volodimir Pigida and Jane Doe Pigida constitute a marital community
7 and the actions of each were for the benefit of said community.

8 4. Defendant Marina Bondarenko (“Bondarenko”) is an individual believed to reside
9 in King County, Washington.

10 5. Defendants Marina Bondarenko and John Doe Bondarenko constitute a marital
11 community and the actions of each were for the benefit of said community.

12 6. Defendant Lakeshore Enterprises Trust is allegedly a trust with a mailing address of
13 227 Bellevue Way N.E., #82, Bellevue, Washington 98004.

14 6a. Defendant SoundT Studios LLC (“SoundT”) is a Washington limited liability
15 company.

16 7. Pigida and Bondarenko are, or were, principals, officers, owners, shareholders or
17 insiders of the debtor.

18 8. On information and belief, Pigida and Bondarenko are trustees of Lakeshore
19 Enterprises Trust.

20 9. This adversary proceeding is one arising in the Chapter 7 case of the above-named
21 debtor now pending in this court. This court has jurisdiction over this adversary proceeding
22 pursuant to 28 U.S.C. §§ 157, 1334 and 11 U.S.C. §§ 544, 548, 550 and 551. This is a core
23 proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (H) and (O). Venue in this court is proper under
24 28 U.S.C. §§ 1391 and 1409.

1 II. FACTS

2 10. Debtor Trend Sound Promoter AMG Corp. filed a Chapter 11 bankruptcy petition
3 on April 25, 2014. The case was converted to a Chapter 7 proceeding on June 2, 2014. Nancy
4 James was appointed as the Chapter 7 trustee.

5 11. On or about January 27, 2014, the debtor transferred by wire \$1,454,448.11 to Ticor
6 Title Company for the purchase of real property.

7 12. On or about January 29, 2014, the defendants caused to be recorded a Statutory
8 Warranty Deed wherein the grantees were Pigida and Bondarenko as trustees of Lakeshore
9 Enterprises Trust and the property transferred was the real property commonly referred to as 3713
10 Lake Washington Blvd. North, Renton, Washington 98056, and legally described as:

11 Lot 1, City of Renton Lot Line Adjustment Number 003-88, recorded
12 under Recording Number 8806219003, in King County, Washington.

13 13. The purchase price for the property of \$1,499,000 was paid entirely or substantially
14 with funds of the debtor.

15 14. The transfer referenced above was for the benefit of Pigida and Bondarenko
16 individually or, alternatively, as trustees for Lakeshore Enterprises Trust.

17 15. The debtor received no consideration in exchange for the transfer.

18 16. On the date of the transfer, the debtor was insolvent or, in the alternative, became
19 insolvent as a result of the transfer.

20 17. The debtor made the transfer with the actual intent to hinder, delay or defraud its
21 creditors.

22 18. After the transfer the remaining assets of the debtor were unreasonably small in
23 relation to its business or other transactions.

24 19. The debtor intended to incur, or believed or reasonably should have believed that it
25 would incur, debts beyond its ability to pay as they came due as a consequence of the transfer.

1 III. FIRST CAUSE OF ACTION - FRAUDULENT CONVEYANCE

2 20. By reason of the foregoing, the defendants are each liable to the plaintiff for the
3 transfer pursuant to §§ 544, 548, 550 and 551 of the Bankruptcy Code, and RCW 19.40.041 and
4 19.40.051.

5 IV. AMENDED ALLEGATIONS

6 21. Within one year prior to the filing of the petition commencing this case, the debtor
7 transferred to the defendants, or on account of the defendants, unsecured creditors, the sum of
8 \$1,499,999.

9 22. Upon information and belief, said payment was made for and on account of an
10 antecedent debt owed by the debtor to SoundT . SoundT assigned the right to the defendants.

11 23. At the time of the transfer, the debtor was insolvent.

12 24. The transfer referred to in the preceding paragraphs enabled SoundT to receive more
13 than it would have received under Chapter 7 of the Bankruptcy Code if the transfer had not been
14 made.

15 V. SECOND CAUSE OF ACTION - PREFERENTIAL TRANSFER

16 25. By reason of the foregoing, the defendants are liable to the plaintiff in the sum stated
17 above, plus any other money or property transferred by the debtor to the defendants or on account
18 of the defendants, within one year of the filing of the bankruptcy petition, pursuant to Sections 547
19 and 550 of the Bankruptcy Code.

20 WHEREFORE, plaintiff prays for judgment as follows:

21 a) avoiding the January 27, 2014 transfer of \$1,454,448.11, preserving the transfer for
22 the estate and a money judgment against the defendants in that amount;

23 b) vesting title of the property located at 3713 Lake Washington Blvd. North, Renton,
24 Washington 98056, in either the debtor or the bankruptcy estate;

25 c) for interest from the date of the transfer, plus costs and reasonable and/or statutory
attorney's fees; and,

**AMENDED COMPLAINT TO RECOVER
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ALTERNATIVE TO RECOVER A PREFERENCE,
AND TO ADD PARTY - 141120gCmp Page 4**

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d) for such further relief as this court deems just in the premises.

DATED this _____ day of December, 2014.

THE RIGBY LAW FIRM

James Rigby, WSBA #9658
Of Attorneys for Plaintiff/Trustee

**AMENDED COMPLAINT TO RECOVER
FRAUDULENT CONVEYANCE, OR IN THE
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